

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA

*

CRIMINAL NO: 10- 055

v.

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SECTION: “B”

KELLY P. HARRELL

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FACTUAL BASIS

If this case were to proceed to trial the Government would prove the Defendant, KELLY P. HARRELL, guilty beyond a reasonable doubt of this four count Superseding Indictment. The Government would establish the following through reliable and competent evidence:

On December 12, 2008 at approximately 4:15 p.m., New Orleans Police Department (NOPD) Detective Brian Phillips and Sgt. Ryan Lubrano of the NOPD 6th District Narcotics Unit were traveling in a non-script police unit and were both dressed in civilian attire.

As the detectives traveled northbound on Clio Street near South Roman Street, the officers observed a blue Chrysler sedan parked facing southbound on Clio Street. Det. Phillips, sitting in the front passenger seat, saw an unknown black male, later identified as Kelly HARRELL, exit the blue

Chrysler on the driver's side. This vehicle was parked in an area next to a blighted field which was surrounded by a chain link fence and an abandoned warehouse. Det. Phillips observed HARRELL close the driver's side door, remove his genitalia from his pants, and begin urinating on the ground next to the vehicle.

The officers then opted to conduct an investigatory stop to address the violation. Det. Phillips exited his cruiser and identified himself as a police officer. HARRELL became startled and turned towards the Chrysler's driver's side door. Det. Phillips asked HARRELL step towards the police cruiser and produce proper identification. HARRELL complied. As he spoke with HARRELL, Det. Phillips noticed that HARRELL appeared to be nervous, was breathing heavy, and was looking in all directions as if he was looking for a possible escape route. For officer safety, Det. Phillips had HARRELL place his hands on the hood of the police cruiser. HARRELL complied. As Det. Phillips attempted to contact a district unit to assist in a name check of HARRELL, Det. Phillips observed HARRELL remove his hands from the vehicle. Det. Phillips ordered HARRELL to place his hands back on the vehicle. HARRELL complied. Sgt. Lubrano then asked HARRELL if that was in fact his vehicle and began walking towards the passenger side of the vehicle. Upon seeing Sgt. Lubrano approaching his vehicle, HARRELL pushed off the police cruiser and began to flee on foot in a southbound direction on Clio Street. Det. Phillips chased HARRELL and apprehended him at the intersection of South Derbigny Street and Clio Street.

Det. Phillips then relocated HARRELL back to the police cruiser to further investigate the situation. Due to HARRELL's actions, Det. Phillips and Sgt. Lubrano were of the belief that HARRELL was trying to disassociate himself from the parked Chrysler. Det. Phillips approached the Chrysler on the passenger side and observed a black Glock model 27 lying on the front passenger seat. Det. Phillips further observed a black "key holder box" lying immediately next to the pistol

and partially opened. Det. Phillips saw a single piece of aluminum foil inside the open magnetic key box. Through his training and experience, Det. Phillips was aware of individuals storing illegal contraband inside key boxes. Det. Phillips then opened the passenger side door and retrieved the loaded black Glock model 27, .40 caliber semi-automatic pistol, bearing serial number LHK072 from the seat. Det. Phillips also retrieved the black box from the seat and found it to contain thirteen foils all containing a tan powdered substance consistent with heroin, and seven pieces of rock-like substance wrapped in plastic consistent with crack cocaine. The suspected narcotics field tested positive for heroin and crack cocaine respectively. On January 18, 2009, criminalist John Palm, Jr, of the NOPD Crime Laboratory tested the thirteen foils of tan powder and the seven pieces of rock-like substance. Mr. Palm determined that the tan powder substance in the thirteen foils was heroin. Mr. Palm also determined that the seven pieces of rock-like substance wrapped in plastic was crack cocaine. Agents from the Drug Enforcement Administration would also testify that both the heroin and the crack cocaine were packaged in a manner consistent with the packaging of narcotics in preparation for illegal sale.

Det. Phillips then informed HARRELL of the pending charges and Mirandized him. After being advised of his rights, HARRELL stated to Det. Phillips *“Man, I got scared ‘cause I’m a convicted felon, man. That’s why I was running.”*

HARRELL is a convicted felon. HARRELL pleaded guilty to armed robbery on September 20, 1993 in Orleans Parish under docket # 350-641 “D” and was sentenced to 10 years in the Louisiana Department of Corrections. As a convicted felon, HARRELL is legally precluded from possessing any firearms.

Agents from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) would also testify that the loaded Glock model 27, .40 caliber semi-automatic pistol, bearing serial number LHK072 was not manufactured in the state of Louisiana and, as such, had to travel through and affect interstate commerce to be found in Louisiana.

Finally, HARRELL admits that the facts contained in this Factual Basis are true and correct and he acknowledges that said conduct constitutes knowing violations of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2), Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C), Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C), and Title 18, United States Code, Section 924(c)(1)(A).

FREDERICK W. VETERS, JR.
Assistant United States Attorney

DATE

GEORGE CHANEY
Attorney for Defendant

DATE

KELLY P. HARRELL
Defendant

DATE